

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6145 OF 2003

Shri Nandlal Atalmal
Punjabi & Others. .. Petitioners.
Vs.
M/s.Komal Builders and
Developers and Others .. Respondents.

Mr.Harshad E.Palwe for the petitioners.
Mr.C.J.Sawant a/w Mr.Tawade for respondent nos.1 and 2
Mr.Vijay Patil for respondent no.3.

CORAM : D.B.BHOSALE, J.

DATED : 26TH SEPTEMBER, 2006

P.C.:

. Heard learned counsel for the petitioners and learned senior counsel for respondent nos.1 and 2 and learned counsel for respondent no.3.

2. At the outset Mr.Sawant, learned senior counsel for respondent nos.1 and 2 invited my attention to Order 1 Rule 3A of CPC to contend that it is always open under this provision to file an independent suit against the persons in whose favour the third party rights, in the suit property, have been allegedly created. He further submitted that the present suit is pending since 1994 and has reached the stage of cross examination of the

petitioner-plaintiff. In view of the submissions of Mr.Sawant, Mr.Palwe, learned counsel for the petitioners submitted that if liberty is given to the petitioners to file suits as contemplated by Order 1 Rule 3A of CPC, he has instructions from his client, who is present in the court, not to press the present writ petition. In the circumstances, this petition is disposed of as not pressed with liberty to the petitioners to file suit/s as provided for under Order 1 Rule 3A of the Code of Civil Procedure. If the suit/s is/are instituted by the petitioners, the same may be considered in accordance with law. While granting the liberty I shall not be understood to have expressed any opinion as to the right of the petitioners to file such suit/s or as to the limitation thereof. The writ petition is, accordingly, disposed of.

(D.B.Bhosale, J.)